

DOCKET FILE COPY ORIGINAL

Response of the United States  
Department of Justice to ALTS Motion  
re Ameritech's Michigan Section 271  
Application

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

In the Matter of )

FEB 5 1997

Application of Ameritech Michigan )  
Pursuant to Section 271 of the )  
Telecommunications Act of 1996 to )  
Provide In-Region, InterLATA )  
Services in the State of Michigan )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 97-1

---

RESPONSE OF THE UNITED STATES DEPARTMENT OF JUSTICE  
TO MOTION BY ALTS TO STRIKE AMERITECH'S RELIANCE ON  
AN AGREEMENT WITH AT&T FROM ITS MICHIGAN APPLICATION

---

The United States Department of Justice hereby responds to the motion filed February 3, 1997 by the Association for Local Telecommunications Service ("ALTS") to strike from Ameritech's pending application for interLATA entry in Michigan all reliance on an asserted agreement with AT&T.

The dispute concerning the status of Ameritech's interconnection agreement with AT&T demonstrates the importance of the Commission's policy that "a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the

No. of Copies rec'd  
List ABCDE

0+11

Commission rely in making its findings thereon."<sup>1</sup> The status of Ameritech's agreement with AT&T is material to its application, since Ameritech is seeking interLATA entry authority under "Track A" of the statute. 47 U.S.C. § 271(c)(1)(A). Ameritech seeks to make use of this alleged agreement in order to supplement the three existing agreements with operational facilities-based providers that it references as the basis for its application. In particular, Ameritech contends that the unbundled switching requirement of the checklist is met because the switching terms of the alleged AT&T agreement are available to the three operational providers, Brooks, MFS and TCG, by operation of "most favored nation" clauses in their agreements.<sup>2</sup>

However, there are substantial grounds for doubt as to whether the Michigan Public Service Commission ("MPSC") has approved any binding agreement between AT&T and Ameritech, and considerable confusion as to what the terms of any such agreement might be on key issues such as unbundled switching. A MPSC decision in Ameritech's arbitration with AT&T was reached on November 26, 1996, but this decision left open several issues to be resolved by negotiations. The MPSC's arbitration decision stated that, except for unresolved

---

<sup>1</sup> Federal Communications Commission, Procedures for Bell Operating Company Applications under New Section 271 of the Communications Act, FCC 96-469 (Dec. 6, 1996), at 2.

<sup>2</sup> Ameritech has recognized that Brooks, MFS, TCG are not actually using any unbundled switching from Ameritech. Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan (January 2, 1997) at 32. Ameritech's agreements with them only provide for "ports" supplied under state tariffs. Ameritech Interconnection Agreements with Brooks Fiber, MFS and TCG (Volumes 1.2, 1.3 and 1.4 of Ameritech Application), Section 9.2.

issues, "the interconnection agreement, as adopted by the arbitration panel and as modified by this order, is approved."<sup>3</sup> However, because the MPSC did not have a final text of an agreement before it at the time it issued this order, there is no specific document that can be identified as having been "approved" at that time. Since that time, Ameritech has submitted four separate AT&T "agreements" to the MPSC. The most recent submission was filed with the MPSC on January 29 -- twelve days after Ameritech supplemented its original section 271 application and the Commission modified its procedural schedule in light of Ameritech's supplemental filing. The terms of the most recent agreement, which is the only agreement signed by both Ameritech and AT&T,<sup>4</sup> appear to differ in material ways from the prior "agreements."

In light of the confusion concerning which agreement, if any, has been approved by the MPSC, and the resultant uncertainty about the manner in which Ameritech will comply with the competitive checklist requirements of section 271, the Department of Justice, other parties, and the Commission itself will have great difficulty in properly assessing Ameritech's application. When it established procedures to govern section 271 applications, the Commission stated that

---

<sup>3</sup> Michigan Public Service Commission Order, Case No. U-11151 & U-11152, at 30 (Nov. 26, 1996).

<sup>4</sup> Ameritech and AT&T both recognize that the January 29 agreement, which has not yet been made a part of the Commission's record in this proceeding, supersedes all other agreements previously filed. Ameritech's letter transmitting the January 29 agreement to the MPSC stated that it "supercedes all previously filed agreements." Letter from Edward R. Becker to Dorothy F. Wideman, MPSC, Jan. 29, 1997. Likewise, AT&T advised the Commission that "the Executed Agreement filed on January 29 with the MPSC is the only current interconnection agreement between AT&T and Ameritech Michigan." Letter from R. Gerard Salemme, AT&T, to Regina M. Keeney, FCC, Feb. 3, 1997.

"[w]e expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon. In the event that the applicant submits . . . factual evidence that changes its application in a material respect, the Commission reserves the right to deem such submissions a new application and start the 90-day review process anew."<sup>5</sup>

It is essential to fair and orderly review of applications under Section 271 that all commenters review the same basic facts. Section 271(d)(3) affords the Commission only 90 days from filing to rule on a Bell Operating Company's interLATA entry application in a state, and parties other than the applicant have very limited time in which to assess applications and to offer comments. Given these short deadlines, all parties should have access at the time of a filing to the basic facts upon which the applicant relies in support of its application. In this case, however, it is apparent that some of those basic facts -- which are material to the fundamental question of whether there are approved interconnection agreements satisfying the requirements of the competitive checklist -- are unclear on the face of Ameritech's own submissions. In these circumstances, the Commission should obtain clarification as to which version of the AT&T agreement, if any, has been approved by the MPSC, and should re-start the

---

<sup>5</sup> Federal Communications Commission, Procedures for Bell Operating Company Applications under New Section 271 of the Communications Act, FCC 96-469 (Dec. 6, 1996), at 2.

Response of the United States  
Department of Justice to ALTS Motion  
re Ameritech's Michigan Section 271  
Application

90-day review process after obtaining such clarification in order to afford all parties an adequate opportunity to review and comment on the application.<sup>6</sup>

Respectfully submitted,



Donald Russell  
Chief  
Telecommunications Task Force

Carl Willner  
Katherine E. Brown  
Stuart H. Kupinsky  
Attorneys  
Telecommunications Task Force

Antitrust Division  
U.S. Department of Justice  
555 4th Street, N.W.  
Room 8104  
Washington, D.C. 20001  
(202) 514-5621

February 5, 1997

---

<sup>6</sup> Regardless of how the Commission resolves the pending motion, since the Commission has already extended the comment period for other parties on this application to February 10, in its Public Notice, DA 97-242 (Feb. 3, 1997), it should at least also extend the deadlines for the filing by the Department of Justice and for reply comments by an equivalent period to ensure adequate opportunity to review and respond to comments filed in the initial round.

**Certificate of Service**

I hereby certify that I am an attorney for the United States Department of Justice in this proceeding, and that I have caused a true and accurate copy of the foregoing Response of the United States Department of Justice to Motion by ALTS to Strike Ameritech's Reliance on an Agreement with AT&T from its Michigan Application to be served on the following parties to this proceeding in the manner indicated below.

via hand-delivery:

Richard J. Metzger  
General Counsel  
ALTS  
1200 19th Street, NW  
Suite 560  
Washington, D.C. 20036

Antoinette Cook Bush, Esq.  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Ave., NW  
Washington, D.C. 20005-2111  
Counsel for Ameritech

via FAX and first-class mail:

John T. Lenahan  
Associate General Counsel  
Ameritech  
30 South Wacker Drive  
Chicago, Illinois 60606  
(312) 609-6307 fax



Carl Willner  
Attorney  
Telecommunications Task Force  
Antitrust Division  
U.S. Department of Justice  
(202)514-5813